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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,465	07/13/2001	Steven E. Swenson	MSFT-0584/167511.2	8067

41505 7590 01/10/2006

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EXAMINER

CHANG, JUNGWON

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/904,465	Applicant(s) SWENSON ET AL.	
	Examiner Jungwon Chang	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL ACTION

1. This office action is responsive to amendment filed on 10/19/2005. Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5, 7 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Logan et al. (US 6,633,845), hereinafter Logan.
4. As to claim 1, Logan discloses the invention as claimed, including a method for automatically performing digital signal processing (DSP) processing on media entities (songs) (fig. 2; col. 1, lines 8-11; col. 3, lines 23-65; col. 6, lines 48-56) comprising the steps of:

identifying media entity data for DSP processing (col. 1, line 66 – col. 2, line 16);

processing said identified media entity data in a computing environment having at least one computer server (200; fig. 2) to create DSP processed media entity data (col. 2, lines 17-39; col. 3, lines 23-65); and

aggregating said DSP processed data for storage in a persistent data store (col. 3, lines 31-36; col. 4, lines 13-15).

5. As to claim 2, Logan discloses wherein said identifying step comprises the step of:

communicating at least one data store with DSP unprocessed media entity data (210, fig. 2; col. 3, lines 54-65; input device inherently comprises magnetic storage drive, i.e., tape cartridges disk, CD-ROMS, or optical storage media, which allow to store data);

generating data identifying information about said unprocessed media entity data (col. 3, line 54 – col. 4, line 12); and

communicating said generated data identifying information for use in DSP processing (col. 3, lines 23-53).

6. As to claim 3, Logan discloses receiving DSP unprocessed media entity data (210, fig. 2; col. 3, lines 54-65);

segmenting said DSP unprocessed media entity data for processing (col. 2, lines 30-39; col. 5, lines 2-21 and 26-44); and

spawning at least one DSP process performing DSP functions and operations on

said DSP unprocessed media entity data to produce DSP processed data (col. 3, lines 23-65; col. 7, lines 11-53).

7. As to claim 5, Logan discloses converting said unprocessed media entity data into a format consistent with DSP processing (col. 3, line 54 – col. 4, line 12).

8. As to claim 7, Logan discloses collecting said DSP processing data for storage in a persistent DSP processed media entity data store (col. 3, lines 31-36; col. 4, lines 13-15).

9. As to claims 9 and 10, they are rejected for the same reasons set forth in claim 1 above. In addition, Logan discloses a computer readable medium bearing computer executable instructions (col. 3, lines 38-53).

10. As to claim 11, it is rejected for the same reasons set forth in claim 1 above. In addition, Logan discloses a computing device (fig. 2; col. 1, lines 8-11; col. 3, lines 23-65; col. 6, lines 48-56).

11. Claims 12-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Gunnerson (US 6,657,116).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

12. As to claim 12, Gunnerson discloses a system providing automated DSP processing of media entities in a computing environment (figs. 1-2, 8-11) comprising:

- a media entity identification system (104, figs. 1-2) that operates on at least one cooperating data store having DSP unprocessed media entities to identify DSP unprocessed media entities (col. 2, lines 9-10 and 50-67; col. 3, lines 29-36 and 50-65; col. 5, line 57 – col. 6, line 17);

- a DSP processing system receiving said DSP unprocessed media entities (compact disc reader provides raw music data to the music controller; col. 3, lines 29-31) and performing DSP operations and/or function on said DSP unprocessed media entities to generate DSP processed media entities (music controller 104 convert the raw music data into an encoded format; col. 3, lines 31-65; col. 2, lines 60-67); and

- an aggregation system for aggregating DSP processed media entities into data sets representative of original DSP unprocessed media entity data sets for storage in a persistent data store having aggregated DSP processed media entities (col. 2, line 50 – col. 3, line 36; col. 1, lines 13-25).

13. As to claim 13, Gunnerson discloses a distributed computing environment having

at least two computer servers capable of executing distributed automated DSP processing processes (one or more remote computers, i.e., servers; col. 4, lines 64-67).

14. As to claims 14 and 15, Gunnerson discloses wherein said DSP processing system employs said generated identification information to retrieve DSP unprocessed media entity data from said cooperating data store having said DSP unprocessed media entity data (col. 2, lines 9-18; col. 6, lines 11-17).

15. As to claim 16, Gunnerson discloses wherein said DSP processing system spawns at least one DSP process on one of said at least two computer servers to process said DSP unprocessed media entity data (one or more remote computers, i.e., servers; col. 4, lines 64-67), said DSP process converting said DSP unprocessed media entity data to a data format consistent with DSP processing (music controller 104 convert the raw music data into an encoded format; col. 3, lines 31-65; col. 2, lines 60-67).

16. As to claim 17, Gunnerson discloses communicating means for communicating said DSP unprocessed media entity from said DSP unprocessed media entity data store (col. 3, lines 29-36).

17. As to claim 18, Gunnerson discloses wherein said aggregation system comprises at least one weighting and/or averaging algorithm for use when aggregating said DSP

processed media entities (col. 1, lines 50-67).

18. As to claim 19, Gunnerson discloses a method for automating DSP processing in a music matching and analysis system (col. 1, lines 43-67) comprising the steps of:

providing a computing environment capable of executing at least one DSP process (figs. 1-2), said DSP process identifying DSP unprocessed media entities and performing DSP functions and operations on said identified DSP unprocessed media entities to generate DSP processed media entities (col. 2, lines 9-10 and 50-67; col. 3, lines 29-36 and 50-65; col. 5, line 57 – col. 6, line 17);

wherein said computing environment is a distributed computing environment capable of running at least two parallel DSP processes (one or more processors or processing units that inherently perform parallel processing; col. 4, lines 7-20; col. 5, lines 28-44);

providing a data store having at least one unprocessed media entity (col. 3, lines 29-36); and

providing a persistent data store capable of storing DSP processed media entities (col. 2, line 50 – col. 3, line 36; col. 1, lines 13-25)).

19. As to claim 20, Gunnerson discloses providing at least one communications means to communicate DSP processed media entities to participating users (col. 1, lines 43-67; col. 4, lines 50-63).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. (US 6,633,845), hereinafter Logan, in view of Dwek (2001/0018858).

22. As to claims 4 and 6, Logan discloses sending data from a media entity data store having DSP unprocessed media entity data to at least one portion of a computing environment performing DSP processing (col. 3, line 54 – col. 4, line 12). However, Logan does not specifically disclose copying data; and deleting data. Dwek discloses a user interface for copying (fig. 3; page 10, [0121]) and deleting data (fig. 3; page 5, [0060], [0062]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Logan and Dwek because Dwek's user interface would allow the user to quickly and easily generate data files.

23. As to claim 8, it is rejected for the same reasons set forth in claim 1 above. However, Logan does not specifically disclose sorting said collected data, said sorting employing at least one weighting and/or averaging algorithm to realize sorting. Dwek discloses sorting said collected data (rank; page 1, [0011]), said sorting employing at least one weighting and/or averaging algorithm to realize sorting (preference; page 5,

[0069]; page 6, [0073]-[0074]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Logan and Dwek because Dwek's sorting the collected data would provide fast search by sorting the collected data according to the user's preference.

Response to Arguments

24. Applicant's arguments filed 10/19/2005 have been fully considered but they are not persuasive.

25. The Declaration filed on 10/19/2005 under 37 C.F.R. 1.131 has been considered but is ineffective to overcome Gunnerson (US 6,657,116) reference.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred."). (MEPE 715.07)

26. To support conception, on page 2 of Declaration (paragraph 8), Applicant states that "As evidence of my prior conception on May 4, 2000, I made mention of the invention of '071 application in a notebook (copies of the relevant notebook pages attached hereto)". However, the copies of the relevant notebook pages have not

submitted with the amendment filed 10/19/2005. Furthermore, on page 1 of the Declaration (paragraph 3), applicant states that "As an inventor, I am familiar with the '071 application and the associated rejections alleged in the outstanding Official Action, dated August 10, 2005". However, the examiner cannot identify what '071 application is (please provide full patent application number). The Office Action dated August 10, 2005 does not include any references having '071 application.

27. Therefore, Applicant fails to provide evidence to show that the system actually worked for its intended purpose. In order to show reduction to practice the device must have been sufficiently tested to prove it actually worked for its intended purpose. Applicant's submission is not adequate for the examiner to be able to draw the conclusion that such testing took place. For Example, there is not enough information for the examiner to determine whether the test conditions represented actual working conditions or were sufficiently close to actual conditions so that one would be confident that it would work in appropriate circumstances.

28. Rejection of Claims based on Logan

(1) Applicant argues that Logan does not teach or suggest "identifying media entity data for DSP processing," as recited in claim 1.

In reply to argument (1), examiner respectfully disagrees. Logan clearly teaches identifying media entity data for DSP processing (200, fig. 2; a system for analyzing songs and identifying a relatively short; col. 2, lines 12-16; the song is labeled; col. 2,

lines 24-29; col. 3, lines 23-36; distortion between various segments of the song is measured in order to identify those segments; col. 5, lines 25-44; the system 200 has been able to automatically decipher the song's structure; col. 6, lines 48-56).

For all of these reasons, claim 1 is properly rejected under 35 U.S.C. 102(e) as being anticipated by Logan.

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jungwon Chang whose telephone number is 571-272-3960. The examiner can normally be reached on 9:30-6:00 (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on 571-272-3964. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jungwon Chang'.

Jungwon Chang
January 6, 2006